

IN THE COURT OF THE JUDICIAL MAGISTRATE No. II AT SALEM

Present : J. DHINESH KUMARAN B.A., B.L., (Hons.)

Judicial Magistrate No. II, Salem

On Monday, the 24th day of June, 2024

Calendar Case (C.C.) No. 1085 of 2022

in

Crime No. 650 of 2021

(On the file of Kitchipalayam Police Station, Salem)

CNR No.TNSA04-005997-2022

<i>Statement as per Rule 106 of the Criminal Rules of Practice, 2019</i>		
1.	Serial Number	Calendar Case (C.C.) No. 1085 of 2022
2.	Name of the Police Station and Crime Number	State of Tamil Nadu Represented by its Sub-Inspector of Police Kitchipalayam Police Station, Salem. Crime No.650 of 2021 ...Complainant
3.	Name of the Accused	1. HASEN (M/21 years) S/o. Dhavuth Lakshmi Nagar, Jalapura, Muththavalli Yakup Street, Salem. Occupation: Labourer 2. NAIYAS (M/23 years) S/o. Abdul Samath Muthavalli Yakup Street, Jaklapura, Salem. Occupation: Labourer 3. YARAB (M/23 years) S/o. Rafick No.3, Sangili Asari Kadu, Pachapatti, Salem. Occupation: Labourer 4. JILANI (M/23 years) S/o. Hanifa
4.	Father's name	
5.	Occupation	
6.	Residence	
7.	Age	

		No.96, Ashok Kumar 3 rd cross, Pachapatty, Salem-15. ... Accused 1 to 4
8.	Date of Occurrence	31.10.2021 at 10:00 PM
9.	Date of Complaint (Date of the Chargesheet)	Date of Chargesheet: 25.11.2021 Date of Filing of Chargesheet: 06.06.2022
10.	Date of Apprehension	The 1 st and 4 th accused were arrested on 14.11.2021. The 2 nd and 3 rd were not arrested in this case. They were enlarged on anticipatory bail.
11.	Date of Release on bail	The 1 st and 4 th accused were released on bail on 22.11.2021.
12.	Date of Commitment	Not Applicable
13.	Date of Commencement of Trial (The date of furnishing of documents u/s.207, Cr.P.C.)	07.01.2023
14.	Substance of Accusation read out and explained to the accused as per section 251 of the Code	Upon service of the summons u/s.204 of the Code of Criminal Procedure, 1973 ("Code") and appearance of the accused 1 to 4, copies of the final report and documents were given to the accused in compliance with section 207 of the Code on 07.01.2023. Thereafter, on 07.06.2023 substance of accusation for the offences u/s.294(b) and 506(i) of the Indian Penal Code was read out and explained to the accused, 1. Hasen and 4.Jilani. Substance of accusation for the offences u/s.294(b), 323 and 506(i) of the Indian Penal Code, 1860 was read out and explained to the

		accused, 2.Niyas and 3.Yaraf. The accused 1 to 4 pleaded not guilty and claimed to be tried. Hence, the matter was posted for trial.
15.	Closure of Trial	21.06.2024
16.	Sentence or Order	The 1 st accused, Hasen S/o. Davuth and 4 th accused, Jilani S/o. Hanifa are found not guilty and acquitted of the entire charge against him for the offences u/s.294(b) and 506(i) of the Indian Penal Code, 1860. The 2 nd accused, Niyas S/o. Abdul Samath and 3 rd accused, Yaraf S/o. Rafick are found not guilty and acquitted of the entire charge against him for the offence u/s. 294(b), 323 and 506(i) of the Indian Penal Code, 1860. The accused are acquitted of the accusation against them as per section 255 (1) of the Code.
17.	Service of copy of judgement or finding on accused	No. The judgment was uploaded on CIS portal and made available on E-Courts.
18.	Explanation of delay	There is no inordinate delay in the disposal of the case.
19.	Property Order	No case property was seized and deposited to this Court in this case; hence, the need to pass property order as per section 452 of the Code of Criminal Procedure, 1973 does not arise.
<i>Paragraphs in the judgement assigned continuous paragraph numbers in due obedience of the direction of the Hon'ble Supreme Court of India in BS Hari Commandant vs Union of India and others (2023 LiveLaw SC 303)</i>		

This case came up for final hearing before me on 21.06.2024 in the presence of **Mr.R.Mani and C.Murali**, Advocates, the learned counsels for the accused

and **Mrs.Roja**, the learned Assistant Public Prosecutor for the State. Having heard both sides, perused the records and having stood over it for consideration, this Court on **24.06.2024 (Monday)** delivers the following,

JUDGMENT

I. CASE OF THE PROSECUTION

- 1) The first informant in the case is, Mr.Hariharan S/o. Ramalingam. The case of the prosecution is that, on 31.10.2021 at about 10:00 PM, when the first informant was in front of his house, the accused 1 to 4 herein abused the first informant using obscene words. Then, the accused Niyas and Yaraf hit the first informant with their hand and thereafter all the accused intimidated to kill the first informant.
- 2) Based on the written first information lodged by the first informant, First Information Report in Crime No.650 of 2021 dated 03.11.2021 was registered against the accused “அடையாளம் தெரியாத 3 நபர்கள்” for the offences u/s.294(b), 323 and 506(i) of the Indian Penal Code, 1860. The accused, Hasen and Jilani herein were arrested on 14.11.2021.
- 3) At the completion of investigation in the case, Final Report dated 25.11.2021 was laid out against the accused 1 and 4 for the offences u/s.294(b) and 506(i) of the Indian Penal Code, 1860. The 2nd and 3rd accused were charged of the offences u/s.294(b), 323 and 506(i) of the Indian Penal Code, 1860.

II. FURNISHING OF COPIES AND HEARING ON SUBSTANCE OF ACCUSATION

- 4) Upon service of the summons u/s.204 of the Code of Criminal Procedure, 1973 (“Code”) and appearance of the accused 1 to 4, copies

of the final report and documents were given to the accused in compliance with section 207 of the Code on 07.01.2023.

- 5) Thereafter, on 07.06.2023 substance of accusation for the offences u/s.294(b) and 506(i) of the Indian Penal Code was read out and explained to the accused, 1.Haseen and 4.Jilani. Substance of accusation for the offences u/s.294(b), 323 and 506(i) of the Indian Penal Code, 1860 was read out and explained to the accused, 2.Niyas and 3.Yaraf. The accused 1 to 4 pleaded not guilty and claimed to be tried. Hence, the matter was posted for trial.

III. EVIDENCE ADDUCED BY THE PROSECUTION

- 6) In order to prove the accusation against the accused, the prosecution examined only 2 witnesses, P.W.1 and P.W.2. Exhibits P.1 to P.6 were marked on behalf of the prosecution. No material objects were exhibited. P.W.1 is the first informant/alleged victim in the case. P.W.2 is the Investigation Officer in the case.
- 7) In order to prove the charge against the accused, the prosecution examined only 2 witnesses, P.W.1 and P.W.2. Exhibits P.1 to P.8 were marked on behalf of the prosecution. No material objects were exhibited. P.W.1 is the first informant/alleged victim in the case. P.W.2 is the Investigation Officer in the case.

IV. QUESTIONING u/s.313(1)(b) OF Cr.P.C., 1973

- 8) The circumstances appearing in the evidence of witnesses against the accused 1 to 4 were put to them and their answer was elicited. The

accused replied that the case against them is false. The accused further stated that there are no defence witnesses and evidence.

V. ARGUMENTS ADVANCED

- 9) The Learned Assistant Public Prosecutor for the State did not place any arguments on behalf of the prosecution. On the other hand, the learned counsel for the accused submitted that a false case has been foisted against the accused and that the prosecution failed to adduce ample evidence to prove the charge against the accused beyond all reasonable doubts. Hence, the counsel prayed for acquittal of the accused.

VI. POINT FOR DETERMINATION

- 10) Whether the prosecution has proved beyond all reasonable doubts that the accused 1 to 4 have committed the offences charged against them?

VII. APPRECIATION OF EVIDENCE AND FACTS

- 11) As per the prosecution, on 31.10.2021 at about 10:00 PM, when the first informant was near his house, the accused 1 to 4 herein abused the first informant and criminally intimidated him. Further, the 2nd and 3rd accused hit the first informant using their hands. Hence, the prosecution charged the accused of the offences u/s.294(b), 323 and 506(i) of the Indian Penal Code, 1860.
- 12) It is common knowledge that in any case, the witnesses are the eyes and ears of the Court. Therefore, this Court has to analyse and ascertain if the prosecution has proved its case against the accused through its witnesses.

• **With respect to the evidence of P.W.1**

- 13) P.W.1, Mr.Hariharan S/o. Ramalingam is the first informant/alleged victim in the case. P.W.1 failed to identify the accused in the dock. P.W.1 admitted his signature on the written first-information and the section 320, Cr.P.C., 1973 petition CrI.M.P.No.2708 of 2024 filed by the accused. However, the said petition was dismissed by this Court as the offence u/s. 294(b), Indian Penal Code, 1860 charged against the accused is non-compoundable.
- 14) With respect to the alleged occurrence on 31.10.2021, the evidence of P.W.1 is as follows:

“2. 31.10.2021 ன் தேதி இரவு 10 மணி அளவில் அடையாளம் தெரியாத 3 நபர்கள் மதுபோதையில் எனது வீட்டிற்கு முன்பு சத்தம் போட்டுக் கொண்டிருந்ததை நான் சென்று கேட்டபோது அவர்களில் ஒருவர் என்னை அறுவறுக்கத்தக்க கெட்ட வார்த்தைகளால் திட்டினார். மற்றொருவர் அவரது கையால் எனது தோள்பட்டையில் அடித்தார்.

3. நான் சத்தம் போடவே அங்கிருந்து அவர்கள் சென்றுவிட்டார்கள். பின்னர் அன்றைய தினமே இரவு சுமார் 12 மணி அளவில் எனது வீட்டின் கதவை யாரோ தட்டினார்கள். நான் வெளியே வந்து பார்த்தபோது என்னிடம் இரவு 10.30 மணி அளவில் தகராறு செய்த நபர்கள் என் வீட்டின் வெளியே, முன்பு நடந்த பிரச்சனைக்கு போலீசிடம் செல்வாயா என்று திட்டினார்கள்.

4. அந்த சத்தத்தைக் கேட்டு எனது சகோதரர் செந்தில்வேல் அங்கு வந்தார். அங்கு அவரைப் பார்த்த அந்த அடையாளம்

தெரியாத நபர்கள் என்னைக் கொல்லாமல் விடமாட்டேன் என்று கூறி அங்கிருந்து சென்றுவிட்டார்கள். இந்த சம்பவம் குறித்து நான் கிச்சிப்பாளையம் சூரமங்கலம் காவல் நிலையத்தில் புகார் கொடுத்தேன்.

5. சம்பவத்தின் போது எனது வீட்டிற்கு முன்பு தகராறு செய்த நபர்களை எனக்கு அடையாளம் தெரியாது. ஆஜர் எதிரிகள் தான் என்னை அடித்தார்களா என்பது குறித்தும் எனக்கு தெரியாது.” (Emphasis supplied)

- 15) According to P.W.1 on 31.10.2021 some unidentified persons abused and intimidated him. It is notable that, in his evidence, P.W.1 did not state anything with respect to any hurt caused to him by the perpetrators. There is nothing incriminating in the chief examination of P.W.1 against the accused herein. Exhibits P.1 and P.2 were marked through P.W.1. Although, P.W.1 was examined by the prosecution u/s.154 of the Indian Evidence Act, 1872, no fact in support of the prosecution case was deposed by the witness.

• **With respect to the evidence of P.W.2**

- 16) P.W.2, Mr.John Edward S/o.Michael is the Investigation Officer in the case. He deposed with respect to the receipt of the written first information, registration of First Information Report, visit to the scene of occurrence, preparation of rough sketch and observation mahazar, arrest of the accused, Haseen and Jilani, reasons for non-arrest of the accused, Niyas and Yaraf and filing of Final Report in the case. Exhibits P.3 to P.6 were marked on behalf of the prosecution through P.W.2. In his cross-examination, P.W.2 admits that the first information in the case was

given only 3 days after the alleged occurrence. The other suggestions put forth by the defence in favour of the accused was outrightly denied by the witness.

17) Since, the first informant/alleged victim in the case himself failed to support the case of the prosecution and no other independent eye-witness to the occurrence was examined by the prosecution, the evidence of P.W.2 alone cannot be relied to incriminate and attribute culpability to the accused.

18) In **Bhagwan Singh v. State of Haryana**, the Hon'ble Supreme Court of India while dealing with the subject of hostile witnesses held as follows:

“The fact that the court gave permission to the prosecutor to cross-examine his own witness, thus characterising him as, what is described as a hostile witness, does not completely efface his evidence. The evidence remains admissible in the trial and there is no legal bar to base a conviction upon his testimony if corroborated by other reliable evidence.”

19) If the above proposition enumerated by the Hon'ble Supreme Court is applied to the present case, it is important to take into consideration that no material fact was deposed by the prosecution witnesses, P.W.1 and P.W.2 to constitute the offences charged and to incriminate the accused. In such case, the accused herein cannot be convicted based on the evidence of the prosecution witnesses.

20) **Therefore, upon consideration of the deposition of the witnesses and exhibits filed by the prosecution, this Court concludes that the prosecution has failed to prove in accordance with section 3 of the**

Indian Evidence Act, 1872 the involvement of the accused herein in the occurrence and the facts constituting the material ingredients of the offences charged against the accused beyond all reasonable doubts.

VIII. THE DECISION

- 21) In light of the discussion and conclusions drawn under the previous head, this Court holds that the prosecution HAS FAILED TO PROVE the charge against the accused 1 to 4 beyond all reasonable doubts.
- 22) **Hence, the 1st accused, Haseen S/o. Davuth and 4th accused, Jilani S/o. Hanifa are FOUND NOT GUILTY and ACQUITTED of the entire charge against him for the offences u/s.294(b) and 506(i) of the Indian Penal Code, 1860.**
- 23) **The 2nd accused, Niyas S/o. Abdul Samath and 3rd accused, Yaraf S/o. Rafick are FOUND NOT GUILTY and ACQUITTED of the entire charge against him for the offence u/s. 294(b), 323 and 506(i) of the Indian Penal Code, 1860.**
- 24) **The accused are acquitted of the accusation against them as per section 255 (1) of the Code.**

IX. PROPERTY ORDER u/s. 452 OF THE CODE

- 25) No case property was seized and deposited to this Court in this case; hence, the need to pass property order as per section 452 of the Code of Criminal Procedure, 1973 does not arise.

X. BOND u/s.437-A OF THE CODE OF CRIMINAL PROCEDURE, 1973

- 26) The accused shall furnish an own bond for a sum of Rs.10,000/- in accordance with section 437A of the Code of Criminal Procedure, 1973 to appear before the Higher Court as and when such Court issues notice in respect of any appeal or petition against the judgment. The bond shall remain in force for six months from the date of its execution.

Directly typed by me on my personal laptop, corrected and pronounced by me in Open Court on this 24th day of June, 2024.

J. DHINESH KUMARAN
Judicial Magistrate No. II, Salem

Note:

- i. The accused were on bail throughout the trial.*
- ii. No witness was retained more than three times.*
- iii. The outcome of the case shall be forthwith communicated to the complainant and the learned APP of this Court vide email.*

LIST OF EVIDENCE

(As per Rule 107(1) of Criminal Rules of Practice, 2019)

For Prosecution

Witnesses:

S. No.	Examined as	Name of Witness	Date of Examination	Exhibits Marked
1.	P.W.1	Hariharan S/o.Ramalingam	12.06.2024	P.1 and P.2
2.	P.W.2	John Edward S/o. Michael	19.06.2024	P.3 to P.6

Documents:

S.No.	Exhibits	Marked through	Date of Document	Description of Document
1.	P.1	P.W.1	03.11.2021	Signature of P.W.1 in the written first informantion
2.	P.2	P.W.1	12.06.2024	Section 320 Cr.P.C., petition filed by the accused with the signature of first informant
3.	P.3	P.W.2	03.11.2021	Written First Information lodged by the first informant
4.	P.4	P.W.2	03.11.2021	First Information Report in Crime No.650 of 2021
5.	P.5	P.W.2	03.11.2021	Observation Mahazar
6.	P.6	P.W.2	--	Rough Sketch

Material Objects: Nil

For Defence

Witnesses: Nil

Documents: Nil

Material Objects: Nil

J. DHINESH KUMARAN
Judicial Magistrate No. II, Salem

CASE SUMMARY

(As per Rule 106(4) of Criminal Rules of Practice, 2019)

i.	Period of remand of the accused	The 1 st and 4 th accused were remanded from 14.11.2021		
ii.	Date of filing of Final Report	Date of Chargesheet: 25.11.2021 Date of Filing of Chargesheet: 06.06.2022		
iii.	Date of committal of the case to the Court of Session	Not Applicable		
iv.	Date of hearing on substance of accusation u/s.251 of the Code	07.06.2023		
v.	Filing of miscellaneous petitions and their results including the results on challenge before Superior Court	Petition	CrI.M.P.No.	Result
		437 CrPC	1350/2021	Allowed
		320 CrPC	2708/2024	Dismissed
		Surrender	4669/2021	Allowed
vi.	Date of chief examination and cross examination of witnesses	Witness examined as	Date of chief examination	Date of cross examination
		P.W.1	12.06.2024	12.06.2024
		P.W.2	19.06.2024	19.06.2024

vii.	Date of examination of the accused u/s.313 of the Code	21.06.2024
viii.	Details of abscondence of an accused and his appearance/production, as the case may be	Nil
ix.	Grant of stay by the Superior Courts and results there of	Nil
x.	Details of Victim Compensation Awarded	Nil

J. DHINESH KUMARAN
Judicial Magistrate No. II, Salem